

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ALVIN GREENBERG, *et al.*,
Plaintiffs,
v.
AMAZON.COM, INC.,
Defendant

CASE NO. 2:21-cv-00898-RSL

**ORDER DENYING MOTION FOR
PROTECTIVE ORDER AND
GRANTING MOTION TO COMPEL**

This matter comes before the Court on “Amazon’s Motion for Protective Order Under Rule 26(c)(1)” (Dkt. # 78) and “Plaintiffs’ Cross-Motion to Compel Withheld Data” (Dkt. # 154).¹ Plaintiffs allege that Amazon.com, an on-line retailer, engaged in unlawful price gouging during the COVID-19 pandemic, raising (or allowing third-party vendors to raise) prices on a vast array of products and reaping extraordinary profits. Plaintiffs, five individuals from California, Arizona, and North Carolina, seek to represent a class of:

All persons who purchased any consumer good or food item, including any listed on Appendix A, on Amazon.com between January 31, 2020 and October 20, 2022 whose price was set at an unfair level. The precise identification of unfair prices and when they were in place will be refined after discovery and expert analysis.

¹ This matter can be resolved on the papers submitted. The parties' requests for oral argument are DENIED. Amazon's motion to strike plaintiffs' motion to compel is also DENIED.

Dkt. # 66 at ¶ 130. The named plaintiffs purchased items such as cleaning products, dry yeast, flea and tick spray, ramen noodles, rice, hand sanitizer, and distilled water. The appendix referenced in the proposed class definition includes additional items, such as processed and unprocessed foods, face masks, household goods, over-the-counter medicines, ivermectin, computer peripherals, and yoga mats.

In September 2024, plaintiffs served written discovery seeking “[a]ll transactional data for purchases made on Amazon.com,” “[a]ll data for product offers on Amazon.com,” and “[d]ata sufficient to track the Buy Box price for all products sold on Amazon.com” between January 31, 2017, and the present. Dkt. # 79 at 8 (Request for Production Nos. 11-13). Amazon filed this motion for protective order, arguing that the requests do not seek relevant information insofar as they encompass data related to the offer and sale of goods that (a) were not purchased by the named plaintiffs, (b) are not essential, and/or (c) were available from other sources.

A. Scope of Discovery Under Rule 26(b)

Rule 26 of the Federal Rules of Civil Procedure governs the permissible scope of discovery in federal civil litigation. Rule 26(b) sets forth the threshold requirement that the information sought must appear “relevant to any party’s claim or defense and proportional to the needs of the case....” The information plaintiffs seek is clearly relevant. Plaintiffs allege that Amazon acted unfairly for purposes of the Washington Consumer Protection Act (“CPA”) when it took advantage of a global pandemic and related market disruptions to raise prices at a time when consumers had few other options. The data they seek will enable them to identify which consumer goods and food items saw a price spike during the first few years of the pandemic. While the data will not, standing alone, prove plaintiffs’ price gouging claim, establishing that a price increase occurred is a necessary first step.

Amazon argues that the request is impermissibly overbroad because it encompasses consumer goods and food items that are not essential to the purchaser’s health and safety.

1 Plaintiffs' burden under the CPA is to show that Amazon's conduct was unfair. The
2 Washington Supreme Court recently made clear that where conduct is alleged to be unfair
3 but is not regulated by statute, plaintiffs "need[] show only that the defendant's conduct is
4 in violation of public interest." *Greenberg v. Amazon.com, Inc.*, 3 Wn.3d 434, 459 (2025).
5 A violation of public interest related to price gouging can be shown in a number of ways
6 that do not require plaintiffs to establish that the purchased items were essential for health
7 or safety. *Id.*, at 455-56 (discussing various criteria the Federal Trade Commission has
8 used to make fairness determinations). Amazon asserts that, even if essentiality is not a
9 necessary element of unfairness, plaintiffs are bound by the allegations of the Second
10 Amended Complaint wherein they affirmatively limited their claims to purchases of
11 essential items. A fair reading of the complaint does not support such an interpretation.
12 While some of the products purchased by the named plaintiffs are described in the Second
13 Amended Complaint as "essential," others are simply food or consumer goods that were
14 desired by the purchaser for one reason or another, such as the beef ramen Christina King
15 purchased to ease her mother's anxiety about product shortages. Appendix A, referenced in
16 the proposed class definition, includes many items that may have been "essential" to
17 making a particular recipe or to participating in a desired activity but that can hardly be
18 characterized as indispensable, necessary, or extremely important.

19 Amazon also suggests that the requests for production are impermissibly overbroad
20 because data regarding all offers and sales of consumer goods and food items will
21 undoubtedly include information regarding products for which there was no price increase
22 during the class period. No evidence is provided for this supposition, and plaintiffs' theory
23 of the case is that Amazon used a global pandemic and ensuing market disruptions as an
24 excuse to increase prices on a wide array of products. The Court will not assume otherwise
25 at this stage of the litigation. Even if there are items whose prices remained relatively
26 stable during the relevant period, the production is relevant in that it will enable plaintiffs

1 to (1) identify products with significant price fluctuations and (2) test their theory that
 2 price-gouging occurred unless products were readily available elsewhere or were simply
 3 not in demand during a global pandemic. Amazon offers no other means by which
 4 plaintiffs can accomplish these tasks.

5 Recognizing that the discovery sought is relevant to the class claims asserted in the
 6 Second Amended Complaint, Amazon filed a separate motion to strike the class
 7 allegations. If successful, the motion to strike would limit the scope of this lawsuit to only
 8 the named plaintiffs and the handful of products they purchased during the first few years
 9 of the pandemic. Such a limitation would make the vast majority of the transactional data
 10 plaintiffs seek largely irrelevant. Given the standard used to evaluate motions to strike
 11 class allegations, however,² the Court cannot presume that the motion will be successful
 12 and will not restrict otherwise permissible discovery simply because the motion might be
 13 granted in the future.

14 With regards to the proportionality requirement, courts consider factors such as “the
 15 importance of the issues at stake in the action, the amount in controversy, the parties’
 16 relative access to relevant information, the parties’ resources, the importance of the
 17 discovery in resolving the issues, and whether the burden or expense of the proposed
 18 discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). If plaintiffs are going to
 19 prove their claim that Amazon engaged in price gouging during the COVID-19 pandemic,
 20 they need discovery regarding the prices charged before, during, and after the declared

22 ² A court “may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or
 23 scandalous matter.” Fed. R. Civ. P. 12(f). But Rule 12(f) does not authorize the resolution of disputed and substantial
 24 factual or legal issues. The function of a Rule 12(f) motion is to avoid the expenditure of time and money that would
 25 arise from litigating spurious issues (*i.e.*, those that are redundant, immaterial, impertinent, or scandalous), not to act
 26 as a substitute for a Rule 12(b) motion. Rule 12(f) motions to strike are generally disfavored because the motions may
 be used as delay tactics and because of the strong policy favoring resolution on the merits. *In re Amazon Serv. Fee
 Litig.*, 705 F. Supp. 3d 1255, 1263 (W.D. Wash. 2023). This is especially true of motions to strike class action
 allegations, as “the shape and form of a class action evolves only through the process of discovery.” *Hoffman v.
 Hearing Help Express, Inc.*, No. C19-5960, 2020 WL 4729176, at *2 (W.D. Wash. Mar. 27, 2020) (citations omitted);
 see also *Dorian v. Amazon Web Servs., Inc.*, No. C22-269, 2022 WL 3155369, at *2 n.1 (W.D. Wash. Aug. 8, 2022)
 (refusing to consider “premature” request to strike class allegations at the motion to dismiss stage).

1 emergency. Only Amazon has access to the information plaintiffs need. Amazon
 2 acknowledges that this litigation involves billions of transactions, suggesting that the
 3 amount in controversy is extraordinary. The importance of the issues at stake in the action,
 4 the importance of the discovery in resolving those issues, the amount in controversy,
 5 defendants' exclusive access to the information, and Amazon's resources all support a
 6 finding that the discovery requests are proportional. The only remaining issue is whether
 7 the burden or expense of the proposed discovery outweighs its likely benefit, an issue that
 8 is discussed below.

9 **B. Protective Order Under Rule 26(c)**

10 Even if a discovery request seeks relevant and proportional information, discovery
 11 may nevertheless be prohibited under Rule 26(c) upon a showing of "annoyance,
 12 embarrassment, oppression, or undue burden or expense" in connection with a particular
 13 request. The Court is authorized to "forbid[] inquiry into certain matters, or limit[] the
 14 scope of disclosure or discovery to certain matters . . ." Fed. R. Civ. P. 26(c)(1)(D). To
 15 establish good cause for a protective order under Rule 26(c), the movant must show "'that
 16 specific prejudice or harm will result' if the protective order is not granted." *In re Roman*
 17 *Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th Cir. 2011) (quoting *Foltz*
 18 *v. State Farm Mut. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003)). "Rule 26(c) confers
 19 broad discretion on the trial court to decide when a protective order is appropriate and
 20 what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36
 21 (1984).

22 Amazon argues that responding to the discovery requests would require a manual
 23 review of each product page because searching for the categories of goods purchased by
 24 the named plaintiffs, such as "face masks", would return hits for items ranging from
 25 Halloween masks to N95 respirators to moisturizing face mask products. Dkt. # 80 at ¶¶ 5-
 26 12. But plaintiffs have not requested transactional data for the categories of goods they

1 themselves purchased. Changing the nature, scope, and reach of a discovery request in
 2 order to preclude automated searching does not mean that the actual discovery request
 3 poses an undue burden.

4 With regards to the fact that plaintiffs' actual discovery requests are limited to
 5 transaction data related to "consumer goods" and "food items," Amazon states that it does
 6 not categorize its offerings using those labels. Dkt. # 80 at ¶ 4. Amazon does not say that it
 7 has no tools at its disposal to identify what it considers "consumer goods" and/or "food
 8 items." Rather, it argues that it would be unfair to require it to perform searches and make
 9 productions based on its own understanding of the terms, when plaintiffs could then take
 10 issue with that understanding and demand that Amazon start the search process all over
 11 again. Amazon's definition of "consumer good" as an item sold for personal consumption,
 12 Dkt. # 78 at 10, appears to be consistent with the ordinary use of the phrase. *See*
 13 Cambridge Dictionary, [https://dictionary.cambridge.org/us/dictionary/english/consumer-](https://dictionary.cambridge.org/us/dictionary/english/consumer-goods)
 14 [goods](https://dictionary.cambridge.org/us/dictionary/english/consumer-goods) (defining "consumer goods" as "products that people buy for their own use");
 15 Merriam-Webster Dictionary, [https://www.merriam-](https://www.merriam-webster.com/dictionary/consumer%20goods)
 16 [webster.com/dictionary/consumer%20goods](https://www.merriam-webster.com/dictionary/consumer%20goods) (defining "consumer goods" as "goods that
 17 directly satisfy human wants"). Plaintiffs offer no alternative definition, nor do they take
 18 issue with Amazon's interpretation of the phrase. For purposes of Amazon's search in
 19 response to Requests for Production 11-13, "consumer goods" shall include all items sold
 20 for personal consumption or use. Because neither party has identified any ambiguity in the
 21 phrase "food item," no further clarification is necessary.

22 The party seeking to defeat discovery on the ground that a request is unduly
 23 burdensome must allege specific facts showing the nature and extent of the burden.
 24 "[B]road allegations of harm, unsubstantiated by specific examples or articulated
 25 reasoning, do not satisfy the Rule 26(c) test." *Foltz*, 331 F.3d at 1130 (quoting *Beckman*
 26 *Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992)). *See also Raya v. Barka*,

No. 3:19-CV-2295-WQH-AHG, 2022 WL 686460, at *7 (S.D. Cal. Mar. 8, 2022); *Dunlap v. Alaska Radiology Assocs., Inc.*, No. 3:14-CV-00143-TMB, 2019 WL 13193359, at *3 (D. Alaska Mar. 22, 2019); *Awosika v. Target Corp.*, No. 11-0185-RSM, 2011 WL 13048452, at *1 (W.D. Wash. May 26, 2011); *Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528–29 (D. Nev. 1997)). Amazon has not argued, much less shown, that searching for or producing offer data, transaction data, pricing notices, and/or “contribution profit” data for all products would be technically difficult or would impose a burden that is out of line with the claims and damages at issue in this case. With regards to the “price error prevention” (“PEP”) and “atypical pricing – featured offer disqualification” (“AP-FOD”) data, Amazon argues that the raw data would have to be collected from multiple sources and a document created to provide plaintiffs “the necessary business logic and know-how” to compile the data in a reasonably accurate fashion, a task that would take approximately 40-80 hours to complete. Dkt. # 169 at ¶¶ 8-9. If Amazon were to do the compilation, it would take another 40-80 hours. Dkt. # 169 at ¶ 10. Verifying the accuracy of the compilation and ensuring, to the extent possible, that the combined data set reflects the way Amazon’s systems worked at any given time would take at least 160 additional hours to complete. Dkt. # 169 at ¶ 11. Given the data’s central relevance to this case, the number of people employed by Amazon, and the company’s extraordinary technical capabilities and familiarity with the data at issue, the Court finds that a production which may take up to 320 hours (two months of a single employee’s time) is not undue in terms of either time or expense.

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For all of the foregoing reasons, Amazon’s motion for protective order (Dkt. # 78) is DENIED and plaintiffs’ cross-motion to compel (Dkt. # 154) is GRANTED.

DATED this 18th day of July, 2025.

Mrs Casnik

Robert S. Lasnik
United States District Judge